

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2765

Introduced by
Representatives Hershberger, Bradley, Campbell CH, Farley, Senator Landrum
Taylor: Representatives Anderson, Burges, DeSimone, McGuire, Tobin,
Senators Gray L, Rios, Soltero

AN ACT

AMENDING SECTION 8-807, ARIZONA REVISED STATUTES; AMENDING TITLE 8, CHAPTER 10, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 8-807.01; RELATING TO CHILD PROTECTIVE SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 8-807, Arizona Revised Statutes, is amended to
3 read:

4 8-807. CPS information: public record: use: confidentiality:
5 violation: classification: definition

6 A. CPS information shall be maintained by the department as required
7 by federal law as a condition of the allocation of federal monies to this
8 state. All exceptions for the public release of CPS information shall be
9 construed as openly as possible under federal law.

10 B. If there is a reasonable need for the CPS information, the
11 department, or a person who receives CPS information pursuant to this
12 subsection, shall provide CPS information to a federal agency, a state
13 agency, a tribal agency, a county or municipal agency, a county attorney, a
14 school, a community service provider, a contract service provider or any
15 other person that is providing services pursuant to this chapter:

16 1. To meet its duties to provide for the safety, permanency and
17 well-being of a child, provide services to a parent, guardian or custodian or
18 provide services to family members to strengthen the family pursuant to this
19 chapter.

20 2. To enforce or prosecute any violation involving child abuse or
21 neglect, including provision of the CPS information to a defendant after a
22 criminal charge has been filed.

23 C. The department shall disclose CPS information to a court, a party
24 in a dependency or termination of parental rights proceeding or the party's
25 attorney, the foster care review board or a court appointed special advocate
26 for the purposes of and as prescribed in this title.

27 D. The department shall disclose CPS information to a domestic
28 relations, family or conciliation court if the CPS information is necessary
29 to promote the safety and well-being of children. The court shall notify the
30 parties that it has received the CPS information.

31 E. A person or agent of a person who is the subject of CPS information
32 shall have access to CPS information concerning that person.

33 F. The department:

34 1. May provide CPS information to confirm, clarify or correct
35 information concerning an allegation or actual instance of child abuse or
36 neglect that has been made public by sources outside the department.

37 2. May provide and, on request, shall provide ~~summary information~~ CPS
38 RECORDS regarding a fatality or near fatality caused by abuse or neglect AS
39 PRESCRIBED BY SECTION 8-807.01.

40 3. May provide CPS information to a person who is conducting bona fide
41 research, the results of which might provide CPS information that is
42 beneficial in improving child protective services.

43 4. May provide access to CPS information to the parent, guardian or
44 custodian of a child if the CPS information is reasonably necessary to
45 promote the safety, permanency and well-being of the child.

1 G. Access to CPS information in the central registry shall be provided
2 as prescribed in section 8-804.

3 H. To provide oversight of child protective services, the department
4 shall provide access to CPS information to the following persons, if the CPS
5 information is reasonably necessary for the person to perform the person's
6 official duties:

7 1. Federal or state auditors.

8 2. Persons conducting any accreditation deemed necessary by the
9 department.

10 3. A standing committee of the legislature or a committee appointed by
11 the president of the senate or the speaker of the house of representatives
12 for purposes of conducting investigations related to the legislative
13 oversight of the department of economic security. This information shall not
14 be further disclosed.

15 4. A legislator who is responsible for oversight of the enabling or
16 appropriating legislation to carry out these functions. This information
17 shall not be further disclosed. To request a file pursuant to this paragraph:

18 (a) The legislator shall submit a written request for CPS information
19 to the presiding officer of the body of which the state legislator is a
20 member. The request shall state the name of the person whose case file is to
21 be reviewed and any other information that will assist the department in
22 locating the file. The request shall also include the office of the
23 department at which the legislator wants to review the file.

24 (b) The presiding officer shall forward the request to the department
25 within five working days of the receipt of the request.

26 (c) The department shall make the necessary arrangements for the
27 legislator to review the file at an office of the department, chosen by the
28 legislator, within ten working days.

29 (d) The legislator shall sign a form, before reviewing the file, that
30 outlines the confidentiality laws governing child protective services files
31 and penalties for further release of the information.

32 5. A citizen review panel as prescribed by federal law, a child
33 fatality review team as provided in title 36, chapter 35 and the office of
34 ~~ombudsman-citizen's~~ OMBUDSMAN-CITIZENS aide.

35 I. A person who is not specifically authorized by this section to
36 obtain CPS information may petition a judge of the superior court to order
37 the department to release that CPS information. The court shall balance the
38 rights of the parties entitled to confidentiality pursuant to this section
39 against the rights of the parties seeking release of the CPS information.
40 The court may release otherwise confidential CPS information only if the
41 rights of the parties seeking the CPS information and any benefits from
42 releasing the CPS information sought outweigh the rights of the parties
43 entitled to confidentiality and any harm that may result from releasing the
44 CPS information sought.

1 J. Except as provided in subsection K of this section, before it
2 releases records under this section, the department shall take whatever
3 precautions it determines are reasonably necessary to protect the identity
4 and safety of a person who reports child abuse or neglect and to protect any
5 other person if the department believes that disclosure of the CPS
6 information would be likely to endanger the life or safety of the person.
7 The department is not required by this section to disclose CPS information if
8 the disclosure would compromise the integrity of a child protective services
9 or criminal investigation.

10 K. A person who is the subject of an unfounded report or complaint
11 made pursuant to this chapter and who believes that the report or complaint
12 was made in bad faith or with malicious intent may petition a judge of the
13 superior court to order the department to release the CPS information. The
14 petition shall specifically set forth reasons supporting the person's belief
15 that the report or complaint was made in bad faith or with malicious intent.
16 The court shall review the CPS information in camera and the person filing
17 the petition shall be allowed to present evidence in support of the petition.
18 If the court determines that there is a reasonable question of fact as to
19 whether the report or complaint was made in bad faith or with malicious
20 intent and that disclosure of the identity of the person making the report or
21 complaint would not be likely to endanger the life or safety of the person
22 making the report or complaint, it shall provide a copy of the CPS
23 information to the person filing the petition and the original CPS
24 information is subject to discovery in a subsequent civil action regarding
25 the making of the report or complaint.

26 L. The department shall provide the person who conducts a forensic
27 medical evaluation with any records the person requests, including social
28 history and family history regarding the child, the child's siblings and the
29 child's parents or guardians.

30 M. The department shall provide CPS information on request to a
31 prospective adoptive parent, foster parent or guardian, if the information
32 concerns a child the prospective adoptive parent, foster parent or guardian
33 seeks to adopt or provide care for.

34 N. If the department receives information that is confidential by law,
35 the department shall maintain the confidentiality of the information as
36 prescribed in the applicable law.

37 O. A person may authorize the release of CPS information about the
38 person but may not waive the confidentiality of CPS information concerning
39 any other person.

40 P. The department may provide a summary of the outcome of a child
41 protective services investigation to the person who reported the suspected
42 child abuse or neglect.

43 Q. The department shall adopt rules to facilitate the accessibility of
44 CPS information.

R. The department may charge a fee for copying costs required to prepare CPS information for release pursuant to this section.

S. A PERSON SHALL NOT DISCLOSE, RECEIVE, MAKE USE OF, AUTHORIZE THE USE OF, KNOWINGLY PERMIT THE USE OF OR PARTICIPATE OR ACQUIESCE IN THE USE OF ANY CPS INFORMATION WHETHER THE INFORMATION IS OBTAINED DIRECTLY OR INDIRECTLY FROM CHILD PROTECTIVE SERVICES UNLESS AUTHORIZED BY THIS SECTION OR BY COURT ORDER AND THE INFORMATION IS USED ONLY FOR THOSE PURPOSES PERMITTED BY THIS SECTION OR COURT ORDER.

~~S.~~ T. A person who violates this section is guilty of a class 2 misdemeanor.

~~T.~~ U. For the purposes of this section~~:-~~

~~1.~~ "CPS information" includes all information the department gathers during the course of a child protective services investigation conducted under this chapter from the time a file is opened and until it is closed. CPS information does not include information that is contained in child welfare agency licensing records.

~~2. "Near fatality" means an act that, as certified by a physician, places a child in serious or critical condition.~~

Sec. 2. Title 8, chapter 10, article 1, Arizona Revised Statutes, is amended by adding section 8-807.01, to read:

8-807.01. Release of preliminary CPS information and records in fatalities and near fatalities

A. THE DEPARTMENT MAY, AND ON REQUEST SHALL, PREPARE AND RELEASE PRELIMINARY CPS INFORMATION ABOUT A FATALITY OR NEAR FATALITY THAT IS REASONABLY SUSPECTED TO BE THE RESULT OF ABUSE OR NEGLECT BY A PARENT, GUARDIAN OR CUSTODIAN. THE DEPARTMENT SHALL PROVIDE THIS INFORMATION TO THE REQUESTER NOT MORE THAN FORTY-EIGHT HOURS AFTER THE DEPARTMENT RECEIVES THE REQUEST. THE PRELIMINARY CPS INFORMATION SHALL INCLUDE:

1. THE NAME OF THE CHILD WHO HAS SUFFERED A NEAR FATALITY OR FATALITY.
2. THE FACT THAT A CHILD SUFFERED A NEAR FATALITY OR FATALITY AS THE RESULT OF ABUSE OR NEGLECT.
3. THE NAME OF THE ALLEGED PERPETRATOR, IF AVAILABLE.
4. WHETHER THERE HAVE BEEN REPORTS OF OR A CURRENT OR PAST CASE OF CHILD ABUSE OR NEGLECT INVOLVING THE CHILD AND THE CURRENT ALLEGED ABUSIVE OR NEGLECTFUL PARENT, GUARDIAN OR CUSTODIAN.
5. ACTIONS TAKEN BY CHILD PROTECTIVE SERVICES IN RESPONSE TO THE FATALITY OR NEAR FATALITY OF THE CHILD.

B. NOTWITHSTANDING SUBSECTION E OF THIS SECTION, THE DEPARTMENT MAY CONFIRM, CLARIFY OR CORRECT INFORMATION CONCERNING AN ALLEGATION OR ACTUAL INSTANCE OF CHILD ABUSE OR NEGLECT RESULTING IN A CHILD FATALITY OR NEAR FATALITY THAT HAS BEEN MADE PUBLIC BY SOURCES OUTSIDE THE DEPARTMENT.

C. THE DEPARTMENT MAY, AND ON REQUEST SHALL, RELEASE CPS RECORDS REGARDING A FATALITY OR NEAR FATALITY CAUSED BY ABUSE OR NEGLECT AS PRESCRIBED BY THIS SECTION.

1 D. ON RECEIVING A REQUEST FOR OR DECIDING TO RELEASE THE CPS RECORDS
2 REGARDING A FATALITY OR NEAR FATALITY, THE DEPARTMENT SHALL:

3 1. WITHIN SEVEN DAYS NOTIFY THE OFFICE OF THE COUNTY ATTORNEY THAT IS
4 PROSECUTING THE CRIMINAL CASE, OR THE LAW ENFORCEMENT AGENCY INVESTIGATING
5 THE CRIMINAL CASE IF A COUNTY ATTORNEY IS NOT INVOLVED, OF THE PENDING
6 RELEASE. THE OFFICE OF THE COUNTY ATTORNEY OR THE LAW ENFORCEMENT AGENCY
7 SHALL NOTIFY THE DEPARTMENT WITHIN SEVEN DAYS AFTER RECEIVING THE NOTICE IF
8 IT WANTS TO REVIEW THE CPS RECORDS BEFORE THE DEPARTMENT RELEASES THESE
9 RECORDS.

10 2. GATHER THE CPS RECORDS REGARDING THE FATALITY OR NEAR FATALITY AND
11 REDACT THEM AS PRESCRIBED BY SUBSECTION E OF THIS SECTION.

12 3. IF THE OFFICE OF THE COUNTY ATTORNEY OR THE LAW ENFORCEMENT AGENCY
13 ASKS TO REVIEW THE RECORDS, PROMPTLY PROVIDE A COPY OF THE UNREDACTED AND
14 REDACTED RECORDS TO THE OFFICE OR AGENCY AS SOON AS THE RECORDS HAVE BEEN
15 GATHERED AND REDACTED, BUT NOT LATER THAN THIRTY DAYS AFTER RECEIVING THE
16 INITIAL REQUEST FOR THE RECORDS.

17 4. RELEASE THE RECORDS AS FOLLOWS;

18 (a) IF THE OFFICE OF THE COUNTY ATTORNEY OR THE LAW ENFORCEMENT AGENCY
19 DOES NOT ASK TO REVIEW THE RECORDS, THE DEPARTMENT SHALL PROMPTLY RELEASE THE
20 REDACTED RECORDS AS SOON AS THE REDACTIONS ARE COMPLETE BUT NOT LATER THAN
21 THIRTY DAYS AFTER RECEIVING THE INITIAL REQUEST FOR THE RECORDS.

22 (b) IF THE OFFICE OF THE COUNTY ATTORNEY OR THE LAW ENFORCEMENT AGENCY
23 ASKS TO REVIEW THE RECORDS AND DOES NOT FILE A MOTION OBJECTING TO THE
24 RELEASE OF THE REDACTED RECORDS WITHIN SEVEN DAYS AFTER RECEIVING THE RECORDS
25 FOR REVIEW AS PRESCRIBED BY SUBSECTION F OF THIS SECTION, OR DOES NOT PROPOSE
26 REDACTIONS OF A SELECT PORTION OF THE RECORDS TO THE DEPARTMENT PURSUANT TO
27 SUBDIVISION (c), THE DEPARTMENT SHALL PROMPTLY RELEASE THE REDACTED RECORDS.

28 (c) IF THE OFFICE OF THE COUNTY ATTORNEY OR THE LAW ENFORCEMENT AGENCY
29 OBJECTS TO THE RELEASE OF ONLY A PORTION OF THE RECORDS, THE OFFICE OF THE
30 COUNTY ATTORNEY OR THE LAW ENFORCEMENT AGENCY MAY FILE AN OBJECTION TO THE
31 RELEASE OF THAT PORTION WITH THE JUVENILE COURT PURSUANT TO SUBSECTION F OF
32 THIS SECTION OR PROVIDE THE DEPARTMENT WITH PROPOSED REDACTIONS THAT WOULD
33 ELIMINATE ITS OBJECTIONS TO THE RELEASE WITHIN SEVEN DAYS AFTER RECEIVING THE
34 UNREDACTED AND REDACTED RECORDS. THE DEPARTMENT SHALL MAKE THE PROPOSED
35 REDACTIONS AND SHALL PROMPTLY RELEASE THE RECORDS WHEN THE REDACTIONS ARE
36 COMPLETE, BUT NOT LATER THAN FIVE DAYS AFTER RECEIVING THE PROPOSED
37 REDACTIONS.

38 (d) IF THE OFFICE OF THE COUNTY ATTORNEY OR THE LAW ENFORCEMENT AGENCY
39 HAS PROPOSED REDACTIONS PURSUANT TO SUBDIVISION (c), THE OFFICE OF THE COUNTY
40 ATTORNEY OR THE LAW ENFORCEMENT AGENCY MUST INFORM THE DEPARTMENT WHEN THE
41 RELEASE OF THE REDACTED PORTION OF THE RECORDS NO LONGER JEOPARDIZES THE
42 CRIMINAL INVESTIGATION OR FUTURE JUDICIAL PROCEEDINGS AND THE DEPARTMENT
43 SHALL PROMPTLY RELEASE THAT PORTION OF THE RECORDS.

1 (e) IF THE OFFICE OF THE COUNTY ATTORNEY FILES AN OBJECTION TO THE
2 RELEASE OF THE RECORDS WITH THE JUVENILE COURT PURSUANT TO SUBSECTION F OF
3 THIS SECTION, THE DEPARTMENT SHALL NOT RELEASE THE RECORDS UNLESS ORDERED TO
4 DO SO BY THE JUVENILE COURT.

5 E. BEFORE IT RELEASES ANY RECORDS PURSUANT TO SUBSECTION C OF THIS
6 SECTION, THE DEPARTMENT SHALL REDACT THE FOLLOWING INFORMATION:

7 1. THE NAME AND ANY IDENTIFYING INFORMATION REGARDING THE REPORTING
8 SOURCE.

9 2. THE NAMES, ADDRESSES, TELEPHONE NUMBERS, ETHNICITY, RELIGION OR ANY
10 OTHER IDENTIFYING INFORMATION OF ANY PERSON, OTHER THAN THE CHILD VICTIM, THE
11 ALLEGED PERPETRATOR, A DEPARTMENT STAFF MEMBER OR A SERVICE PROVIDER, WHO IS
12 MENTIONED IN THE RECORDS UNLESS THE PERSON AUTHORIZES THE RELEASE OF
13 CONFIDENTIAL INFORMATION ABOUT THAT PERSON BY PROVIDING A WRITTEN CONSENT FOR
14 RELEASE TO THE DEPARTMENT.

15 3. ANY INFORMATION THAT MAY JEOPARDIZE A CRIMINAL INVESTIGATION OR
16 FUTURE JUDICIAL PROCEEDING AND THAT IS PROPOSED FOR REDACTION BY THE OFFICE
17 OF THE COUNTY ATTORNEY OR LAW ENFORCEMENT AGENCY.

18 4. ANY INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL OR NOT SUBJECT TO
19 DISCLOSURE PURSUANT TO ANY OTHER STATE OR FEDERAL LAW.

20 F. WITHIN SEVEN DAYS AFTER RECEIVING A COPY OF THE REDACTED AND
21 UNREDACTED RECORDS, THE OFFICE OF THE COUNTY ATTORNEY OR THE LAW ENFORCEMENT
22 AGENCY MAY FILE A MOTION WITH THE JUVENILE COURT OBJECTING TO THE RELEASE OF
23 THE CPS RECORDS. THE DEPARTMENT MAY ALSO FILE A MOTION OBJECTING TO THE
24 RELEASE OF THE RECORDS WITHIN SEVEN DAYS AFTER PROVIDING THE RECORDS TO THE
25 OFFICE OF THE COUNTY ATTORNEY OR THE LAW ENFORCEMENT AGENCY. ON RECEIVING A
26 MOTION, THE COURT SHALL:

27 1. SET THE MATTER FOR A HEARING NOT LESS THAN TEN DAYS OR MORE THAN
28 TWENTY DAYS AFTER THE DATE OF THE FILING.

29 2. NOTIFY THE REQUESTOR OF THE DATE OF THE HEARING AND OF THE
30 REQUESTOR'S RIGHT TO BE HEARD AT THE HEARING.

31 3. ORDER THE DEPARTMENT TO PROVIDE THE REDACTED AND UNREDACTED RECORDS
32 TO THE COURT AT THE HEARING FOR IN CAMERA REVIEW.

33 4. ON RECEIVING OBJECTIONS TO RELEASE THE RECORDS OR ANY PORTION OF
34 THE RECORDS, CONSIDER WHETHER THE RELEASE OF THE REDACTED RECORDS MAY
35 JEOPARDIZE A CRIMINAL INVESTIGATION OR FUTURE JUDICIAL PROCEEDING AND
36 CONSIDER THE PRIVACY RIGHTS OF THE CHILD, IF LIVING, OR THE CHILD'S SIBLINGS,
37 PARENTS OR GUARDIAN AND ANY HARM THAT MAY COME FROM THE RELEASE.

38 5. RELEASE ONLY THOSE RECORDS IN WHICH THE BENEFITS TO RELEASE THE
39 INFORMATION OUTWEIGH THE IMPACT ON THE CRIMINAL INVESTIGATION OR FUTURE
40 JUDICIAL PROCEEDINGS, THE PRIVACY RIGHTS OF THOSE AFFECTED BY THE RELEASE AND
41 ANY HARM THAT MAY COME FROM THE RELEASE.

42 6. RULE ON THE OBJECTION WITHIN TEN DAYS AFTER THE HEARING.

43 7. IF ORDERING THAT THE RECORDS, OR ANY PORTION OF THE RECORDS SHOULD
44 NOT BE RELEASED, MAKE WRITTEN FINDINGS ON THE RECORD JUSTIFYING THE CLOSING
45 OF THE RECORDS OR A PORTION OF THOSE RECORDS.

1 G. IF THE REQUESTOR RECEIVES THE REDACTED CPS RECORDS FROM THE
2 DEPARTMENT AND BELIEVES THAT THE REQUESTOR IS ENTITLED TO INFORMATION THAT
3 HAS BEEN REDACTED FROM RECORDS PRODUCED, THE REQUESTOR MAY FILE A MOTION WITH
4 THE JUVENILE COURT REQUESTING THAT THE COURT REVIEW THE REDACTIONS. THE
5 JUVENILE COURT SHALL FOLLOW THE STEPS PRESCRIBED BY SUBSECTION F OF THIS
6 SECTION. IF THE COURT DETERMINES THAT A PERSON WAS WRONGFULLY DENIED ACCESS
7 TO ALL OR A SELECT PORTION OF THE PUBLIC RECORD BASED ON AN ARGUMENT THAT
8 RELEASE WOULD JEOPARDIZE A CRIMINAL INVESTIGATION OR JUDICIAL PROCEEDING, AND
9 IF THE COURT FINDS THAT THE ENTITY ASSERTING THIS ARGUMENT ACTED IN BAD FAITH
10 OR IN ANY ARBITRARY OR CAPRICIOUS MANNER, THE JUVENILE COURT MAY AWARD THE
11 PETITIONER LEGAL COSTS, INCLUDING REASONABLE ATTORNEY FEES, AS DETERMINED BY
12 THE COURT.

13 H. RELEASE OF CPS RECORDS REGARDING CHILD FATALITIES OR NEAR
14 FATALITIES IS GOVERNED ONLY BY THIS SECTION. SECTION 8-807 AND TITLE 39,
15 CHAPTER 1 DO NOT APPLY TO THE RELEASE OF CPS INFORMATION IN CHILD FATALITIES
16 OR NEAR FATALITIES.

17 I. UNREDACTED RECORDS SHALL NOT INCLUDE ATTORNEY-CLIENT PRIVILEGED OR
18 WORK PRODUCT INFORMATION.

19 J. THIS SECTION ONLY APPLIES TO REQUESTS MADE AFTER THE EFFECTIVE DATE
20 OF THIS SECTION.

21 K. FOR THE PURPOSES OF THIS SECTION:

22 1. "CPS INFORMATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 8-807.

23 2. "CPS RECORDS" INCLUDES:

24 (a) IF THE RECORDS RELATE TO A FATALITY OR NEAR FATALITY, ALL
25 INFORMATION THE DEPARTMENT HAS GATHERED REGARDING THE CHILD VICTIM AND THE
26 ALLEGED PERPETRATOR BUT DOES NOT INCLUDE INFORMATION ABOUT THE VICTIM'S
27 SIBLINGS OR ABOUT OTHER FAMILY MEMBERS WHO WERE NOT RESPONSIBLE FOR THE ABUSE
28 OR NEGLECT THAT CAUSED THE FATALITY OR NEAR FATALITY.

29 (b) IF THE RECORDS RELATE TO A FATALITY OR NEAR FATALITY CAUSED BY
30 ABUSE OR NEGLECT, LICENSING RECORDS IF THE FATALITY OR NEAR FATALITY OCCURRED
31 WHILE THE CHILD WAS IN FOSTER CARE.

32 3. "NEAR FATALITY" MEANS AN ACT THAT, AS CERTIFIED BY A PHYSICIAN,
33 PLACES A CHILD IN SERIOUS OR CRITICAL CONDITION.

34 4. "REDACT" MEANS TO PROTECT UNAUTHORIZED INFORMATION FROM RELEASE AND
35 INCLUDES REMOVING PERSONALLY IDENTIFIABLE INFORMATION AND WITHHOLDING
36 DOCUMENTS OR PORTIONS OF DOCUMENTS.